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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/543,118
Filing Date: March 31, 2006
Appellant(s): BAUER ET AL.

Mr. Andres Pallapies
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 24, 2010 appealing from the Office action mailed January 7, 2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

15-18, 20-24, 27-36.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

6,827,410	Antos	12-2004
7,031,144	Carter et al	04-2006
6,101,819	Onaka et al	08-2000
WO 02/065036	Bukulmez et al	08-2002
DE 9218613	Licentia	11-1994

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Specification

1. The amendment filed 10/5/2009 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: page 5, lines 16-19, "[A] recess 40 formed between the rear side of the outer wall piece 11 and an upper side of the plate 7 can be grasped by a user to open and close the door. This recess 40 extends across the entire width of the top of the door".

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 15-18, 20-24, 27, 35-36 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. More specifically, the newly added limitation in claim 15 of a grasping recess being formed between a rear side of the outer wall piece and an upper surface of the plate, and claim 36 of a grasping structure being formed in a top edge of the door, the grasping structure extending across almost an entire width of the door is considered to be new matter, since the original disclosure fails to provide adequate support for said claimed limitation of a grasping recess/grasping structure, and that the drawing figures clearly show a grasping structure in the formed of a handle provided to the outer wall of the door for opening and closing of said door.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 36 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The limitation in the claim of the grasping structure being

formed "in a top edge of the door, the grasping structure extending across almost the entire width of the door" is indefinite for failing to clearly define the metes and bounds of the claimed invention. More specifically, it is not clear how it is possible for "an edge" of the door to have a grasping structure which extends across almost an entire width of the door as claimed. Line 15, "the upper" transverse edge of the door lacks antecedent basis, thus indefinite. Therefore, the claim will be examined as best understood or so far as definite.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 28-31, and 33 stand rejected under 35 U.S.C. 102(e) as being anticipated by WO 02/065036 to Bukulmez et al.

Bukulmez et al discloses a refrigerating appliance comprising all the elements recited in the above listed claims including a body, comprising: a door 2 abutting the body in a closed position; a display element/control panel 3; a viewing window 13 formed on said door; and said viewing window 13 oriented such that said display element/control panel 3 is visible when said door is closed, said door comprising: an outer wall; an inner wall; said outer wall and said inner wall interconnected along their

longitudinal and transverse edges forming a space therebetween to form a depth for the door; and one transverse edge formed with a channel spacing extending through the door and a viewing window 13 extending over said channel spacing, wherein the viewing window and channel spacing allowing user visual access to space adjacent the opposing side of the door, said door having a rectangular outline and a pair of shorter rectangular sides and a pair of longer rectangular sides joining said shorter sides into said rectangular outline, including said viewing window 13 formed on one of said shorter rectangular sides of said door serving as said transverse edge, a transverse edge of said outer wall and a corresponding transverse edge of said inner wall lie opposite one another and an opening serving as said viewing window formed over said depth of said door, said transverse edge of said outer wall has said viewing window formed therein serving as a recess and projecting over said corresponding transverse edge of said inner wall, a first end element 9 affixed to the edge of said outer wall and an edge of said inner wall, said first end element and said outer and inner walls define an insulating intermediate space, said first end element following the contour of said viewing window, an at least partially transparent pane 14 arranged in said viewing window 13, with said pane 14 inserted in a window cut-out formed in said end element 9; wherein the door 2 covers the body of the refrigerating appliance to its upper edge and wherein the control panel 3 mounted on the upper front edge of the front side of the body of the refrigerating appliance is visible through the viewing window 13.

Claim Rejections - 35 USC § 103

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claim 32 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bukulmez et al.

Bukulmez et al discloses all the elements as discussed above except for the pane formed integrally with said end element.

In regard to the pane formed integrally with the end element (instead of two parts), the examiner takes the position that it would have been obvious to have the pane of Bukulmez formed integrally with the end element, since it is well known that constructing formerly various structures into a single or integral structure or vice versa involves only routine and well within the level of one skill in the art.

11. Claim 34 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bukulmez et al in view of DE 9218613 to Licentia.

Bukulmez et al discloses all the elements as discussed above except for the door including a non-transparent decoration formed at least on a portion of the back of the pane.

Licentia teaches the idea of providing a household appliance with a non-transparent decoration in a panel for aesthetic purpose. Therefore, it would have been obvious to modify the structure of Bukulmez et al by providing the door with a non-transparent decoration for aesthetic purpose, as taught by Licentia, since both teach alternate conventional household appliance structure, thereby providing structure as claimed.

12. Claims 15-17, 20-24, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over USP 6,827,410 to Antos et al in view of WO 02/065036 to Bukulmez et al.

Antos et al discloses a refrigerating appliance comprising all the elements recited in the above listed claims including: a body 14, a door 12 abutting the body 14 in a closed position, the door comprising an outer wall, an inner wall, said outer and inner walls interconnected along their longitudinal and transverse edges forming a space therebetween to form a depth for the door, an upper element 28 being attached to an upper transverse edge of the door, the upper end element 28 including a plate (defining as the horizontal portion extending between vertical member 36 and vertical member 46, such as shown in Fig 5) extending horizontally between the inner and outer walls across the depth of the door and an outer wall piece 30 that extends upward from a

front edge of the plate, wherein a grasping recess is formed between a rear side of the outer wall piece 30 and an upper surface of the plate; a control panel 16

The differences being that Antos et al fails to disclose (1) the limitation in claim 15 of a viewing window being formed in the outer wall piece 30, the viewing window allowing a user visual access to a space behind the viewing window, (2) the limitation in claim 16 of the viewing window is formed on one of the shorter rectangular sides of the door 12 serving as said upper transverse edge, (3) the limitation in claim 20 of the door including an at least partially transparent pane arranged in said viewing window, (4) the limitation in claim 21 of said pane formed integrally with said upper end element 28, (5) the limitation in claim 22 of said pane is inserted in the viewing window, (6) the limitation in claim 23 of said outer wall is arched at least in the area of said viewing window and said pane mounted under pressure, (7) the limitation in claim 24 of the door including locating means for acting centrally on said pane for locating said pane on said door, (8) the limitation in claim 35 of said pane formed from a selected one of a highly transparent material and an at least partially opaque material.

However, in regard to (1), (2), (3), (5), (6), (7), and (8) above, Bukulmez et al teaches the idea of providing a refrigerating appliance comprising a body, a door 2 abutting the body in a closed position, a control panel 3 having a display 6, an upper element 9 being attached to an upper transverse edge of the door 2 including a viewing window 13 formed in an outer wall piece of the upper element 9, the viewing window allowing a user visual access to a space behind the viewing window, the viewing window being formed on one of the shorter rectangular sides of the door serving as said

upper transverse edge, the door including an at least partially transparent pane 14 arranged in said viewing window 13, said pane 14 being inserted in the viewing window 13, said outer wall being arched at least in the area of said viewing window 13 and said pane 14 mounted under pressure, the door 2 including locating means for acting centrally on said pane 14 for locating said pane on said door, and said pane formed from a selected one of a highly transparent material and an at least partially opaque material; wherein the viewing window and pane allow the display 6 to be seen and monitored even when the door is closed.

Therefore, it would have been obvious to modify the structure of Antos et al by providing the control panel 16 with a display therein, a viewing window formed in an outer wall piece of the upper element, the viewing window allowing a user visual access to a space behind the viewing window, the viewing window being formed on one of the shorter rectangular sides of the door serving as said upper transverse edge, the door including an at least partially transparent pane arranged in said viewing window, said pane being inserted in the viewing window, said outer wall being arched at least in the area of said viewing window and said pane mounted under pressure, the door including locating means for acting centrally on said pane for locating said pane on said door, and said pane formed from a selected one of a highly transparent material and an at least partially opaque material in order to allow the display to be seen and monitored even when the door is closed, as taught by Bukulmez, since both teach alternate conventional refrigerating appliance structure, having a control panel provided thereto, thereby providing structure as claimed.

In regard to the limitation in claim 21 of said pane formed integrally with said upper end element 28, since Antos et al, as modified in view of Bukulmez, discloses all the elements as discussed above except for the pane formed integrally with said end element, the examiner respectfully takes the position that it would have been obvious to have the pane of Antos et al, as modified, formed integrally with the end element, since it is well known that constructing formerly various structures into a single or integral structure or vice versa involves only routine and well within the level of one skill in the art.

13. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Antos, as modified, as applied to claim 20 above, and further in view of DE 9218613 to Licentia.

Antos et al, as modified, discloses all the elements as discussed above except for the door including a non-transparent decoration formed at least on a portion of the back of the pane.

Licentia teaches the idea of providing a household appliance with a non-transparent decoration in a panel for aesthetic purpose. Therefore, it would have been obvious to modify the structure of Antos et al, as modified, by providing the door with a non-transparent decoration for aesthetic purpose, as taught by Licentia, since both teach alternate conventional household appliance structure, thereby providing structure as claimed.

14. Claim 36, as best understood or so far as definite, is rejected under 35 U.S.C. 103(a) as being unpatentable over Antos et al in view of Bukulmez, USP 6,101,819 to Onaka et al and USP 7,031,144 to Carter et al.

Antos et al discloses a refrigerating appliance comprising a body 14 with a back side, a front side extending between an upper front edge and a lower front edge, an opening formed in the front side, and a top surface extending to and between the back side and the front side, a control panel 16 mounted on an upper front edge of the front side of the body 14, a door 12 being operable to close off the opening formed in the front side of the body 14 and the door having an outer wall, an inner wall, the outer and inner walls interconnected along their longitudinal and upper and lower transverse edges forming a space therebetween to form a depth for the door, a grasping aperture being formed in a top edge of the door, the grasping aperture extending across almost an entire width of the door.

The differences being that Antos et al fails to disclose the control panel 16 extending to a height such that no portion of the control panel 16 extends higher than the top surface extending to and between the back side and the front side, the upper transverse edge of the door being formed with a viewing window extending over the depth of the door, wherein the door covers the body of the refrigerating appliance to its upper edge and wherein the control panel 16 mounted on the upper front edge of the front side of the body of the refrigerating appliance is visible through the viewing window.

However, Bukulmez et al teaches the idea of providing a refrigerating appliance comprising a body, a door 2 abutting the body in a closed position, a control panel 3 having a display 6, an upper element 9 being attached to an upper transverse edge of the door 2 including a viewing window 13 formed in an outer wall piece of the upper element 9, the viewing window allowing a user visual access to a space behind the viewing window, the viewing window being formed on one of the shorter rectangular sides of the door serving as said upper transverse edge, the door including an at least partially transparent pane 14 arranged in said viewing window 13, said pane 14 being inserted in the viewing window 13, said outer wall being arched at least in the area of said viewing window 13 and said pane 14 mounted under pressure, the door 2 including locating means for acting centrally on said pane 14 for locating said pane on said door, and said pane formed from a selected one of a highly transparent material and an at least partially opaque material; wherein the viewing window and pane allow the display 6 to be seen and monitored even when the door is closed.

Further, Onaka (figs 14-15) and Carter (figs 1-3) both show that it is well known in the art to also having a control panel mounted to the front edge of the front side of a body of a refrigerator appliance such that no portion of the control panel extends higher than the top surface of the body; wherein mounting the control panel to the front side of the body of a refrigerator facilitates viewing of the control panel, yet reduces the overall dimension of the refrigerator appliance.

Therefore, it would have been obvious to one having ordinary skill in the art to modify the structure of Antos et al by providing the control panel 16 with a display

therein, the control panel extending to a height such that no portion of the control panel 16 extends higher than the top surface extending to and between the back side and the front side, the upper transverse edge of the door being formed with a viewing window extending over the depth of the door, wherein the door covers the body of the refrigerating appliance to its upper edge and wherein the control panel 16 mounted on the upper front edge of the front side of the body of the refrigerating appliance is visible through the viewing window in order to allow the display to be seen and monitored even when the door is closed, as taught by Bukulmez, and in order to facilitate viewing of the control panel, yet reducing the overall dimension of the refrigerator appliance, as taught by Onaka and Carter, since the references teach alternate conventional refrigerating appliance structure, having a control panel provided thereto, thereby providing structure as claimed.

(10) Response to Argument

A. The New Matter Objections, and the Rejection Under 35 USC 112, First Paragraph:

In response to appellant's argument on page 8, fifth full paragraph, that providing an aperture to the top of a refrigerator door to open and close the door is well known in the art, and the addition of a handle to the front of the door does not change this fact, the examiner respectfully takes the position although that may well be the case, appellant's original disclosure clearly provides a handle to the front of the door as a grasping structure, and as such the added material to the specification and claims of the recess is now a grasping structure is new matter.

In response to appellant's argument page 9 that Antos also discloses a recess at the top and a separate handle 78, the examiner respectfully takes the position although a prior art may show that it is well known in the art to have a recess and a handle provided to a door for opening the door, it does not mean appellant's added material to the specification and claims of the recess being an additional opening means to the originally disclosure of a handle provided on the front of the door is not new matter.

B. Claim 36 is Indefinite:

In response to appellant's argument on page 10 that the grasping aperture is being shown in the figures, the examiner respectfully takes the position that although a recess is being shown in the figures, the claimed language regarding the door structure in the preceding lines fails to provide adequate structural limitations such that the limitation of "a grasping aperture being formed in a top edge of the door is clearly defined.

In response to appellant's argument on page 10 that line 11 of claim 36 recited transverse edges of the door, thus the upper transverse edge has proper antecedent basis, the examiner respectfully takes the position that (1) the transverse edges of the door would have antecedent basis, but not "the upper transverse edge of the door", and (2) with appellant's position, it is not clear how the door would have "a top edge" in which a grasping aperture being formed and "the upper transverse edge" with which a viewing window being formed, whether the top edge is the same or different from the upper transverse edge.

C. Claims 28-34 Are Anticipated or Made Obvious by the Prior Art:

In response to appellant's argument on page 11 that Bukulmez discloses a display element 3 mounted on the top of the body, and not "on the front edge of the body", the examiner respectfully takes the position that (1) the claimed language recited the display element mounted "at an upper front edge" of the body, not "on" as alleged, and (2) Bukulmez clearly shows the display 3 being mounted "at an upper front edge " of the body.

D. Claims 15-17, 20-24, 27 and 35 are Obvious in view of by the Prior Art:

In response to appellant's argument on page 12 that one of ordinary skill in the art would not have modified Bukulmez to include Antos' end cap, the examiner respectfully takes the position that the Office action clearly states modifying Antos in view of the teaching of Bukulmez.

In response to appellant's argument on page 12 that modifying Antos to include an end cap as illustrated in Bukulmez would destroy the utility of Antos' end cap, the examiner respectfully takes the position that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

1. Claims 15-17, 20-22, 24, 27 and 35:

In response to appellant's argument on page 13 that the horizontal portion of Antos fails to extend across the depth of the door, the examiner respectfully takes the

position that the claimed language merely recited the horizontal portion extending across the depth of the door (which does not mean it extends across the entire depth of the door), thus the horizontal portion of Antos meets the claimed limitation.

2. Claim 23:

In response to appellant's argument on page 14 that neither Antos nor Bukulmez teaches the claimed limitation of the pane mounted under pre-stress, the examiner respectfully takes the position that the claimed language fails to clearly define the term "pre-stress", and taking the broadest reasonable interpretation of said term, the pane 14 of Bukulmez appears to be press/snap-fit to the window in order to retain the pane in place, thus it meets the claimed limitation of "pre-stress".

E. Claim 36 is Obvious in view of the Prior Art:

In response to appellant's argument on page 14, please refer to the examiner's position as noted above regarding the combination of Antos in view of Bukulmez.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Hanh V. Tran

/Hanh V. Tran/

Primary Examiner, Art Unit 3637

Conferees:

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